

New Laws Affecting Residential Rentals

Legal Aid of North Carolina, Inc. –
Durham Office

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Contents

- Parties and Types of Tenancies
- Subsidized Tenancies
- Landlords' Rights, Tenants' Rights
- Special Legal Protections, Tenants
- Termination of Tenancies
- Padlocking, Tenants' Property
- Inspections and Vacant Homes
- Security Deposits
- Landlords' Duties
- Tenants' Affirmative Claims and Counterclaims
- Statutory Fee Regulations
- Foreclosed Homes
- Evictions, Appeals
- Information and Resources

The Parties and the Contract

- Who is a landlord?
- Who is a tenant?
- What is a lease?
- What do the Landlord and Tenant laws address?

Types of Tenancies

- Tenancy for Years – definite ending date
- Periodic Tenancy —renewable from period to period, this tenancy must be terminated by act of parties, with notice per lease or per requirements of NCGS 42-14.
- Tenancy at Will —rare, the lease is for an uncertain term or tenant has possession under a void lease

Incidents of Private Tenancies

- No limit on rate of rent
- Fixed term, or, more commonly, periodic tenancy
- Lease terms about the parties' duties cannot violate state or federal law. See NCGS 42-1 et sequa.

Subsidized Tenancies

- Federal subsidy programs—
 - *Conventional Public Housing*
 - *Housing Choice Voucher Program*
 - *Multi-Family Housing (HUD)*
 - *Rural Development Housing (USDA)*
- State Subsidy programs—
 - *Low Income Housing Tax Credit programs*
NC Housing Finance Agency

Administration of Public Housing and all Section 8 Tenancies

- Generally, a public housing authority (PHA) funded by US HUD administers this program.
- The PHA and landlords must comply with state laws and federal laws, including the US Housing Act and regulations at 24 CFR 960 et seq. and 982 et seq., and so on.
- There is minimal HUD oversight for landlords.
- FORM LEASES are available. *Recommended.*

Incidents of Subsidized Tenancies

- **Affordable rent**: Generally, tenants pay 30% to 40% of the adjusted household monthly income.
- **Limited Supply**: There are long waiting lists, and many disqualifications for applicants.
- Tenants have a **quasi-property interest** in tenancy.
- ❑ No fixed term. This is a *perpetually renewing* periodic tenancy.
- ❑ *Higher standard for termination* of tenancy, additional administrative proceedings required.

Landlords' Rights

- Right to collect rent on time
- Right to inspect premises with reasonable advance notice
- Right to charge late fees and administrative fees
- Right to enforce lease terms

Tenants' Rights

- Right to accommodation and undisturbed possession and enjoyment of the premises
- Right to safe, fit and habitable home conditions, including premises' compliance with the Minimum Housing Code. All appliances that the landlord provides must work properly.
- Right to seek help without facing retaliatory lease termination
- Right to enforce lease terms

Special Protections, Tenants

- Under federal and state law, it is ILLEGAL to discriminate in any aspect of housing-related activity on the basis of race, color, creed, national origin, gender, disability, or familial status (kids/no kids). The key law is US Fair Housing Amendments Act, 42 USC 3601 et seq.
- Investigations and conciliations are performed by Durham HRC, or the NC Human Relations Commission, part of the state Dept. of Administration, or US HUD, and is available from the NC Fair Housing Center, which is a private, non-profit agency.
- Enforcement is by judicial filing or by filing an administrative complaint to Durham HRC, NC HRC, or US HUD.

Special Protections, Tenants

- **Protections for the Disabled**: It is the duty of housing providers to ensure equal use and enjoyment of rental home premises by handicapped persons, by making “reasonable accommodation.” Accommodation cannot place undue burden upon the landlord.
 - Physical modifications (i.e., wheelchair ramp)
 - Modifications of application process and policies (re: annoying neighbors, noise, parking space proximity)
- ***Exception***: Accommodation is not due if the tenant’s conduct presents a threat to health and safety of staff or other tenants.

Special Protections, Tenants

- **Protections for Victims of Violence**: NC Law
 - Lease Termination Is a right per NCGS 42-45.1. The tenant may terminate lease early w/out future rental liability if the person has a “safety plan” from a DV protection organization. The tenant must provide the plan and evidence to the landlord. The remaining tenants, if any, are still liable for the rent.
 - Lock Changes The tenant has right to change locks if landlord fails to do so w/in 72 hours of request, upon landlord’s receipt of a copy of an Order of Protection.

Tenants' Legal Duties

- Pay the rent when due
- NO right to withhold rent absent a court decision
- Observe all enforceable lease terms
- Give proper notice before vacating (periodic tenancy) or leave timely (fixed term)
- Not engage in criminal activity (including violence, drug-related activity, or disturbing the community)
- *Subsidized tenants*: observe the lease and the housing program obligations and rules.

Termination of Tenancies

- **FOUR BASES** per NCGS 42-26 for terminating a tenancy: holdover, nonpayment of rent, breach of lease provision, and criminal or nuisance activity. Cannot be *retaliatory*.
- **HOLDOVER**—For periodic tenancies, the notice to terminate must strictly comply with any requirements stated in the lease, must take effect at the end of the term, and the proper advance notice must be as required either per lease or per state law at NCGS 42-14, 14.1.

Terminations, Cont'd.

- **NONPAYMENT OF RENT**: The landlord must make clear demand for rent owed, and wait 10 days before filing an action in summary ejectment.
- **BREACH OF THE LEASE**: This requires a written lease, a stated right of re-entry upon breach, clear proof of the breach, prompt action by the landlord, and cannot be unconscionable.

WAIVER of breach = Landlord's acceptance of rent after knowledge. Waiver does not apply to PHAs or in eviction actions brought due to criminal activity.

Terminations, Cont'd.

- **CRIMINAL ACTIVITY**—Article 7 of Chapter 42.
 - The legal definition is broad and applies to all NC leases.
 - The law bars criminal activity by tenants, guests, household members, and applies to the residence and “immediate vicinity.”
 - Applies to tenant’s *knowingly* allowing entry of a barred or trespassed person.

Terminations, Cont'd.

- Criminal activity terminations, continued:

Partial eviction of offender from home.

The landlord or the court may *allow* tenant to stay *if* the tenant shows non-involvement.

Result: *Conditional* eviction of tenant. A lease amendment may be needed to remove the name of the barred person. The lease remains in effect. The tenant and family may stay *so long as* the tenant keeps the barred person from re-entering the home.

Terminations, Cont'd.

- **Criminal activity terminations, continued:**
- *Defenses include:* There was no criminal activity, or the tenant, guest or household member did not do the act, or the tenant was the *victim* of crime, or the tenant either did not know of the activity or did all s/he could to prevent it.
- **NOTE:** The waiver defense is statutorily prohibited in criminal activity ejectments. The landlord can accept the rent and evict the tenant.

Padlocking and Tenants' Personal Property

➤ Tenants have 10 business days* to remove personal property from premises *after* padlocking. Tenants must arrange to do so during regular business hours.

➤ * Mobile Home on rental lot: 21 days

- Landlords must allow tenants to remove property. The landlord cannot require any payment.
- After 10 business days, landlords may dispose of tenants' property if the tenant has not removed it.
- Mobile Homes: after 21 days, if a landlord has lawful damages claim, a sale of the home is authorized. Statutory procedure.

When the Tenant Moves Out

- When a resident notifies you that she or he is moving out, arrange a date and time for a final inspection.
- The landlord should inspect and secure the property.
- If the home has been padlocked, inspect and secure the home at that time, and again eleven days after padlocking.
- Take photographs if there is visible damage, debris, or if there are other visible problems.

Final Walk-Through

- When possible, walk through the property with the tenant.
- Have a copy of the initial inspection for both yourself and the tenant.
- Make written notes of any visible damage, what needs to be cleaned, and any items that need to be removed. Both parties sign those notes.
- Inform the tenant of those things, and if time permits, allow the tenant to resolve them.

Secure the Vacant Property

- Keys: Obtain the keys from the resident, or give written instructions about how to return keys.
- Locks: Change the locks!
- Appearance of the Property: It is best not to make it obvious that a place is vacant. Removal of window coverings is not recommended.
- Patrols: Contact local law enforcement about increased patrolling if the home is going to be vacant for more than a few days.

Tenant Security Deposits

➤ The amount of the deposit is set by law.

If rent is paid week to week: 2 weeks

If rent is paid month to month: 1.5 mo

If lease is for more than a month: 2 mo

Landlords must maintain deposits in a separate account.

Parties may agree to waive a deposit. *NOT* recommended.

Parties may agree that the tenant will pay in installments. Such agreements should be written and have a set ending date.

Tenant Security Deposits

➤ USES

- nonpayment of rent
- damage to the home, including the land
- court costs and lawful fees
- costs for unpaid water or sewer services
- other unpaid bills that become a lien against the property due to the tenant's occupancy
- costs of removal and storage of the tenant's property after a summary ejectment proceeding
- non-fulfillment of rental period and ***actual*** costs of re-renting

Tenant Security Deposits

- **Within 30 days of when a tenant returns the keys and vacates the home:**

The landlord must return security deposit or

The landlord must send the tenant an itemized accounting of any money that is withheld, and

NEW, Tenant Security Deposits

- As of 01 October, 2009, the law establishes that **if** a home is *damaged* and the *extent cannot be assessed within 30 days*, the landlord may inform the tenant accordingly during the first 30 days. The landlord must send an interim accounting and obtain a one-time 30 day extension.
- This new law should **not** be understood to mean that deposit refunds are due in 60 days.

NEW, Tenant Security Deposits

- Willful failure of a landlord to comply with the deposit, bond, or notice requirements of the law shall void the landlord's right to retain any portion of the tenant's security deposit.

Landlord's Duty to Maintain the Residential Premises

North Carolina law imposes a Mutuality of Obligation.

The tenant's statutory duty to pay rent is mutually dependent upon the landlord's compliance with statutory duties per NCGS 42-42.

The tenant must pay the rent, even if the home needs repairs. The landlord must maintain the home, even if the rent is unpaid.

***NEW* Law: Imminently Dangerous Conditions**

- **Imminently Dangerous Conditions are now established by statute, and thus require your very prompt attention and repair.**

As of 01 October, 2009, the law establishes the conditions below as "imminently dangerous."

Imminently Dangerous Conditions

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors
leading to the outside.
- g. Broken windows or lack of operable
locks on all windows on the ground level.

Imminently Dangerous Conditions

- h. Lack of operable ***heating*** facilities capable of heating living areas to **65 *degrees*** Fahrenheit

when it is 20 degrees Fahrenheit *outside*

from November 1 through March 31.

Imminently Dangerous Conditions

- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
- l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold."

NEW Law, Carbon Monoxide Detectors

In addition to having working smoke detectors, North Carolina law requires that as of **01 January 2010**, all rental homes must have ***at least*** one working Carbon Monoxide detector.

Further, depending on the size of a dwelling, local Codes or Ordinances may require additional detectors.

NEW Law, Water Service Billing

- With regard to *leases executed on and after 01 October 2009*, the law now establishes **procedures for the way landlords may bill tenants for water service**. The billing must be written and comply with the statute.

Tenants' Affirmative Claims and Counterclaims, Your Exposure

➤ ILLEGAL EVICTION

- Covers any dispossession done without use of summary ejectment action.
- Landlord is LIABLE for actual damages and costs per NCGS 42-25.9.
- Tenants have the right to obtain injunction and alternative remedies of trespass, conversion, and Chapter 75 Unfair Trade Practices damages.

Tenants' Affirmative Claims and Counterclaims, Your Exposure

❖ **WARNING**: When a landlord obtains a judgment for possession of a home and then accepts unpaid rent and costs, that is lawful.

If the landlord also accepts rent for a **new** term, this creates a **new lease** (novation). The tenant is again in lawful possession of the home. If the landlord then executes on a Writ, the tenant has all defenses and options noted above.

Tenants' Affirmative Claims and Counterclaims, Your Exposure

- Retaliatory Eviction, compensatory damages
- Compensatory damages for failure to return or account for Security Deposit-- includes attys. fees
- Compensatory damages for due process or other violations
 - Absence of requisite notice
 - Section 8 termination process, extra steps
 - PHA regulatory authority
- Compensatory damages and injunctive relief for violation of Fair Housing laws

Tenants' Affirmative Claims and Counterclaims, Your Exposure

➤ **RENT ABATEMENT for Defective Conditions**

Compensatory damages for violation the landlord's duty to provide safe, fit and habitable housing.

- Written notice of defects is **not** generally required!
- Measure of damages = fair market rental value as warranted, *minus* actual fair market value; no expert testimony required.
- Set-off is granted against rent owed
- ❖ Landlord's failure to comply is also a Chapter 75 violation

➤ **PROTECT YOURSELF AND YOUR PROPERTY:** use written work orders and **obtain written confirmation of performance of repairs.**

Fees and Costs

- APPLICATION FEES may be nonrefundable.
- LATE FEES may be imposed after rent is 5 days or more late, ONCE per month.
 - If rent is paid monthly: \$15 or 5% of monthly rent, whichever is greater.
 - If rent is paid weekly: \$4 or 5% of weekly rent, whichever is greater.
 - If HCV tenant, fee is based **only** on the tenant's share of the rent.
- ❖ **WARNING**: A late fee for a specific late rental payment cannot be deducted from the next rental payment so as to cause the next rental payment to be in default.

Fees and Costs

- A landlord may charge a one time fee for actually filing court documents.
- Court Costs are due from Tenant only if a landlord obtains a judgment.
- Attorney Fees are recoverable only if a landlord gives written notice in advance.

NEW Law, Fees: Applies to Leases Executed on or after 10.01.09.

- **Complaint-Filing Fee.** – Pursuant to a written lease, a landlord may charge a complaint-filing fee ***not to exceed*** fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater, **only** if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, **and** the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

NEW Law, Fees: Applies to Leases
Executed on or after 10.01.09.

- **Court-Appearance Fee.** – Pursuant to a written lease, a landlord may charge a court appearance fee in an amount equal *to ten percent (10%) of the monthly rent* **only** if the tenant was in default of the lease, the landlord filed, served, and prosecuted successfully a complaint for summary ejectment and/or monies owed in the small claims court, **and** neither party appealed the judgment of the magistrate.

NEW Law, Fees: Applies to Leases
Executed on or after 10.01.09.

- **Second Trial Fee.** – Pursuant to a written lease, a landlord may charge a second trial fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed. The landlord's fee may *not exceed twelve percent (12%) of the monthly rent* in the lease.

NEW Law, Limits on Fees

A landlord is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.

NEW Law, Limits on Fees

- A landlord cannot deduct payment of the fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease as the basis for another summary ejectment action.
- Any fee shall be calculated on the *tenant's share* of the contract rent only, and the rent subsidy shall not be included.

NEW Law, The Protecting Tenants at Foreclosure Act of 2009

If you know that a rental property is in foreclosure, it is a courtesy to inform the resident tenant of the proceedings.

The tenant will need to know to whom to pay rent, and who will arrange for a security deposit refund if ownership changes.

The Protecting Tenants at Foreclosure Act

The tenant may not have to move!

New federal law states that on or after May 20 2009, if a tenant has been renting a place that is sold at a foreclosure sale, once the sale process is completed and the buyer has title, then the buyer becomes the tenant's landlord.

The buyer may choose to continue the tenant's lease.

The Protecting Tenants at Foreclosure Act

- If the buyer decides to end the lease, the buyer **must** give **any** tenant 90 days' notice of lease termination.
- A buyer who plans to move in and use the home as her or his primary residence must give the tenant 90 days' notice to move.
- Otherwise, if the lease has not ended, the resident may stay and pay rent until the end of the lease. The lease and rent do not change during the 90 days.

The Protecting Tenants at Foreclosure Act

- Duration of the Lease: The new landlord must honor the lease, and cannot evict a tenant for “holding over,”
 - If the tenant has a lease with a fixed ending date and the time is not ended, OR
 - if the tenant has a Section 8 Housing Choice Voucher, and if the tenant pays the rent and does not breach the lease or program rules.

Small Claims Court

- Hearings
- Magistrates
- Summary judgments
- Jurisdictional limits
- Level of proof, Burden of proof
- Witnesses and Evidence

Summary Ejectment Proceedings

- Small Claims Court legal process
- Appeals to District Court
- Post-Judgment Matters

Magistrate Summons

STATE OF NORTH CAROLINA		File No. _____ In The General Court Of Justice District Court Division - Small Claims
_____ County		
Plaintiff(s)	<div style="text-align: center;"> MAGISTRATE SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS </div>	
VERSUS		G.S. 7A-217, -232; 1A-1, Rule 4
Defendant(s)	Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____	
TO: Name And Address Of Defendant 1	TO: Name And Address Of Defendant 2	
<div style="text-align: center;"> A Small Claim Action Has Been Commenced Against You! <p>You are notified to appear before the magistrate at the specified date, time and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint.</p> <p>You may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate.</p> <p>If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.</p> </div>		
Date Of Trial	Time Of Trial <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Court
Name And Address Of Plaintiff Or Plaintiff's Attorney		Date Issued _____ Signature _____ <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court </div>
AOC-CVM-100, Rev. 4/01 © 2001 Administrative Office of the Courts		

(Over)

File No. STATE OF NORTH CAROLINA <div style="text-align: center;">COMPLAINT IN SUMMARY EJECTMENT</div> G.S. 7A-216, 7A-232; Ch. 42, Art. 3 and 7 Name And Address Of Plaintiff County _____ Telephone No. _____ <div style="text-align: center;">VERSUS</div> Name And Address Of Defendant 1 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation County _____ Telephone No. _____ Name And Address Of Defendant 2 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation County _____ Telephone No. _____ Name And Address Of Plaintiff's Attorney Or Agent 	<div style="text-align: right;">In The General Court Of Justice District Court Division-Small Claims</div> <hr/> _____ County 1. The defendant is a resident of the county named above. 2. The defendant entered into possession of premises described below as a lessee of plaintiff. Description Of Premises (include Location) _____ <div style="float: right;"> <input type="checkbox"/> Conventional <input type="checkbox"/> Public Housing <input type="checkbox"/> Section 8 </div> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Rate Of Rent \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week</td> <td style="width: 33%;">Date Rent Due _____</td> <td style="width: 33%;">Date Lease Ended _____</td> </tr> </table> <div style="float: right;"> Type Of Lease <input type="checkbox"/> Oral <input type="checkbox"/> Written </div> <hr/> 3. <input type="checkbox"/> The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint. <input type="checkbox"/> The lease period ended on the above date and the defendant is holding over after the end of the lease period. <input type="checkbox"/> The defendant breached the condition of the lease described below for which re-entry is specified. <input type="checkbox"/> Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below. Description Of Breach/Criminal Activity (give names, dates, places and illegal activity) _____ <hr/> 4. The plaintiff has demanded possession of the premises from the defendant, who has refused to surrender it, and the plaintiff is entitled to immediate possession. 5. The defendant owes the plaintiff the following: Description Of Any Property Damage _____ <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Amount Of Damage (if Known) \$ _____</td> <td style="width: 33%;">Amount Of Rent Past Due \$ _____</td> <td style="width: 33%;">Total Amount Due \$ _____</td> </tr> </table> <hr/> 6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs. <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Date _____</td> <td style="width: 50%;">Signature Of Plaintiff/Attorney/Agent _____</td> </tr> </table> <div style="text-align: center; background-color: #cccccc; padding: 5px;">CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF</div> <hr/> I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint. <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Date _____</td> <td style="width: 50%;">Signature _____</td> </tr> </table>	Rate Of Rent \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week	Date Rent Due _____	Date Lease Ended _____	Amount Of Damage (if Known) \$ _____	Amount Of Rent Past Due \$ _____	Total Amount Due \$ _____	Date _____	Signature Of Plaintiff/Attorney/Agent _____	Date _____	Signature _____
Rate Of Rent \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week	Date Rent Due _____	Date Lease Ended _____									
Amount Of Damage (if Known) \$ _____	Amount Of Rent Past Due \$ _____	Total Amount Due \$ _____									
Date _____	Signature Of Plaintiff/Attorney/Agent _____										
Date _____	Signature _____										

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(Over)

Complaint in Summary Ejectment

Appeal to District Court

Trial de novo

- Requisite forms - Indigents
 - Note, landlords are seldom granted Indigent status
- Requisite forms - non-indigents

Petition to Sue or Appeal as an Indigent

STATE OF NORTH CAROLINA		File No.
County 		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Plaintiff <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	VERSUS	PETITION TO SUE/APPEAL AS AN INDIGENT G.S. 1-110; 7A-228
Name Of Defendant <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
AFFIDAVIT		
<small>(check one of the two boxes below)</small>		
<input type="checkbox"/> Petition To Sue - As the individual plaintiff in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of this action. Therefore, I now petition the Court for an order allowing me to bring suit in this action as an indigent. <input type="checkbox"/> I am an inmate in the custody of the Department of Correction. (Note To Clerk: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)		
<input type="checkbox"/> Petition To Appeal - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent. <small>(check one or more of the boxes below as applicable)</small> <input type="checkbox"/> I am presently a recipient of <input type="checkbox"/> food stamps. <input type="checkbox"/> Aid to Families With Dependent Children (AFDC). <input type="checkbox"/> Supplemental Security Income (SSI). <input type="checkbox"/> I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.) <input type="checkbox"/> Although I am not a recipient of food stamps, AFDC, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.		
SWORN AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Petitioner
Title Of Person Authorized To Administer Oaths		Name And Address Of Petitioner (Type Or Print)
Date Commission Expires		
SEAL		
CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION		
I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.		
Date		Signature
Name And Address (Type Or Print)		
ORDER		
Based on the Affidavit appearing above, it is ORDERED that:		
<input type="checkbox"/> the petitioner is authorized to bring suit or to appeal in this action as an indigent. <input type="checkbox"/> the petition is denied.		
Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Judge <input type="checkbox"/> Magistrate (for appeal only)
NOTE TO CLERK: If the petitioner is NOT a recipient of food stamps, AFDC, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.		
AOC-G-106, Rev. 9/95 © 1997 Administrative Office of the Courts		(Over)

Notice of Appeal to District Court

STATE OF NORTH CAROLINA		File No.	Abstract No.
_____ County		Judgment Book And Page No.	
		In The General Court Of Justice District Court Division-Small Claims	
Name Of Plaintiff	NOTICE OF APPEAL TO DISTRICT COURT		
VERSUS			
Name Of First Defendant			
Name Of Second Defendant	G.S. 7A-228, 7A-230		
<p>TO THE CLERK OF SUPERIOR COURT:</p> <p>As the <input type="checkbox"/> plaintiff <input type="checkbox"/> defendant in the above captioned action, I hereby give written Notice of Appeal on the judgment entered. This Notice is given within ten (10) days after the date the judgment in this action was entered.</p> <p><input type="checkbox"/> I certify that today I have served copies of this Notice to all parties involved in this action.</p> <p>I understand that I must pay to the Clerk of Superior Court the court costs for appeal within twenty (20) days after the magistrate rendered judgment, unless I am authorized to appeal as an indigent, or my appeal will be dismissed.</p> <p>If I am the defendant, I also understand that in certain cases if I wish to stay execution of the judgment, I may be required to sign a bond and that the plaintiff may have an execution issued after ten (10) days if I have not signed the required bond.</p> <p>Also, I demand that this Appeal be tried before a <input type="checkbox"/> judge. <input type="checkbox"/> jury.</p>			
Date Of Entry Of Judgment	Date Of Appeal	Date Costs Paid	Amount Of Court Costs Paid \$
Signature Of Appealing Party		Signature Of Appealing Party	
NOTICE TO THE APPEALING PARTY			
<p>NOTICE OF APPEAL. If you did not give Notice of Appeal to the magistrate in open court at the time the judgment was rendered, you may file this written Notice of Appeal with the clerk within ten (10) days after the judgment is entered. You have a right to request a trial by jury. If you do not ask for a jury trial, you will be given a trial by a judge without a jury. You must mail or deliver copies of this form to all of the other parties. If you mail them before filing this form with the Clerk, check the block in the body of the form indicating you have served the parties and fill out the back of the original of this form. If you mail copies after filing this form with the Clerk, you must file a separate certification of service with the Clerk.</p> <p>MANDATORY ARBITRATION. Many counties have mandatory arbitration programs in which appeals from small claims court are heard by an arbitrator before they go to a district court trial. You will be notified if your case is assigned for mandatory arbitration and, if so, what you must do.</p> <p>COURT COSTS. Within twenty (20) days after the magistrate's judgment is entered, you MUST PAY to the clerk, in cash, the court costs for appealing the case, or your appeal will be dismissed. If you cannot afford to pay the appeal costs, you may ask the clerk for the form to appeal as an indigent (AOC-G-106). You must file the form to appeal as an indigent within ten (10) days after the judgment was entered.</p> <p>STOPPING ENFORCEMENT OF JUDGMENT. Summary ejectment: If you are a tenant appealing from a summary ejectment judgment entered against you and you wish to stay on the premises until the appeal is heard, you must SIGN A BOND that you will pay your rent as it becomes due into the Clerk's office; you must PAY IN CASH the amount of rent in arrears as determined by the magistrate; and if the judgment was entered more than five (5) days before the next rental payment is due, you may also have to PAY IN CASH the prorated amount of rent due from the date the judgment was entered until the next rental payment is due. Ask the clerk for the bond form (AOC-CVM-304) to allow you to stay on the premises. If you have not signed this bond and paid the prorated amount of cash within ten (10) days after the judgment was entered, the landlord can ask to have the sheriff remove you from the premises even though the case is being appealed. Possession of personal property: If the magistrate's judgment ordered you to return specific personal property to the other party and you wish to continue to hold that property until the appeal is heard, you must sign a bond, signed by at least one surety, that you and the surety will pay any costs and damages if you do not comply with the judgment of the district court. Ask the clerk for the bond form (AOC-CVM-906M). If you have not signed this bond within ten (10) days after the judgment was entered, the other party can ask to have the sheriff take the property from you even though the case is being appealed. Money judgment: If a money judgment has been entered against you, you do not need to sign a bond to stop enforcement. The judgment is automatically stayed until the appeal is heard.</p>			
NOTICE TO PARTY NOT APPEALING			
<p>If the appealing party has not asked for a jury trial and you wish to have a jury rather than a judge without a jury try your case, you must file a written request for a trial by jury with the clerk within ten (10) days after receiving this Notice and, within the same amount of time, you must mail copies of your written request to the other parties. See section on Mandatory Arbitration above.</p>			
AOC-CVM-303, Rev. 9/03 © 2003 Administrative Office of the Courts		(Over)	

Appeal to District Court

Tenant's Bond

- Payment of bond to stay
- Setting of bond
- Hearings on bond amounts (note *new law*)
- Payment by Clerk to Landlord -- there are exceptions

Bond to Stay Execution

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice District Court Division
Name Of Plaintiff		BOND TO STAY EXECUTION ON APPEAL OF SUMMARY EJECTMENT JUDGMENT
VERSUS		
Name Of Defendant		
G.S. 42-34		
BOND		
Judgment for summary ejectment was entered by the magistrate against the defendant and in favor of the plaintiff on the date listed below. The defendant has given notice of appeal to district court.		
Under the terms of the lease between the plaintiff and defendant, the defendant is obligated to pay rent in the amount and at the times specified below.		
Date Of Judgment	Amount Of Rent \$ _____	<input type="checkbox"/> Per Month <input type="checkbox"/> Per Week Day Of Month Week Rent Due
I, the undersigned defendant, agree to pay into the office of the Clerk of Superior Court the amount of the rent when due as specified above and request the Court to stay execution of the judgment for summary ejectment until this matter is disposed of by the district court. I understand that if I fail to make the payments required by this bond within five (5) days after due, the stay of execution will dissolve and the sheriff may remove me from the premises.		
Date	Signature Of Defendant	
ADDITIONAL CASH BOND		
I, the undersigned defendant, in addition to the bond signed above, now deposit in cash with the Clerk the amount listed below, which is the amount of rent in arrears as determined by the magistrate in the judgment (or, if different, the undisputed amount of arrears as determined by the magistrate in the judgment) and, if the judgment was entered more than five (5) working days before the next rental payment is due, the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease.		
Amount Of Undisputed Rent In Arrears	\$ _____	Date Of Deposit
Amount Of Prorated Rent	\$ _____	Signature Of Defendant
Total Amount Of Undisputed Rent And Prorated Rent Deposited With Clerk	\$ _____	
ORDER		
Upon execution of the above bond(s), execution on the judgment entered in this action is stayed until the action is disposed of on appeal in the district court; or, if the defendant fails to make any rental payment to the Clerk's office within five (5) days of the due date, the stay of execution dissolves.		
Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate <input type="checkbox"/> Judge
<p>NOTE: There are three requirements to stay execution of a summary ejectment judgment. First, all defendants who appeal summary judgments to district court must sign the bond set out in this form if they wish to remain on the premises. That bond is a promise to pay to the Clerk's office future rent as it becomes due. Second, defendants must post in cash with the Clerk of Superior Court the amount of rent in arrears as determined by the magistrate. If the amount of rent in arrears is disputed, the defendant must post only the undisputed amount of rent in arrears as determined by the magistrate. And third, if the landlord's action was based on nonpayment of rent and the magistrate's judgment was entered more than five (5) working days before the date the next rental payment is due, the defendant must post in cash with the Clerk of Superior Court the prorated amount of rent for the days between the day the judgment was entered and the next day when the rent will be due under the lease. A defendant who appeals as an indigent does not have to post in cash the amount of undisputed rent in arrears as determined by the magistrate, but must post in cash the prorated amount of rent for the days between the day the judgment was entered and the next day rent will be due under the lease and must sign the bond to pay to the Clerk's office future rent as it becomes due.</p> <p>If a defendant who is required to sign the bond and deposit cash for the additional bond fails to do both, the execution of the magistrate's judgment is not stayed while the case is being appealed to a district court judge. If the defendant signs the bond and posts the cash bond due, but then fails to pay the rent within five (5) days after it becomes due, the stay of execution dissolves; if the landlord requests execution and pays the proper fees, the Clerk must issue a Writ Of Possession Real Property (AOC-CV-40 1) to remove the tenant from the premises.</p>		
AOC-CVM-304, Rev. 10/2000 ©2000 Administrative Office of the Courts		

Appeal to District Court

- Calendaring Issues
- Peremptory Settings, Criminal Issues
- Discovery

Post-Judgment Proceedings

- Issuance of Writ, payment to Clerk
- Execution of Writ by Sheriff
 - Landlord must meet Sheriff at residence
- Storage option
- NO automatic immediate lien on tenant's property

(Over)

Useful Websites and Resources

- www.durhamnc.gov/departments/nis (Inspections, NIS)
- <http://www.durhamnc.gov/departments/planning/> (Zoning and Planning)
- <http://www.durhamnc.gov/departments/relations/> (Human Relations Dept)
- www.sogpubs.unc.edu (UNC School of Government)
- www.durhamhousingauthority.org (Durham Housing Authority)
- www.nccourts.org (North Carolina Courts)
- www.ncleg.net/gascripts/Statutes/Statutes (NC General Statutes)
- www.gpoaccess.gov/uscode (US Code)
- www.access.gpo.gov/nara/cfr/cfr-table-search (Code of Federal Register)
- www.hudclips.org (US Dept. of Housing and Urban Development)
- www.bazelon.org (Bazelon Center for Mental Health Law—fair housing)
- <http://www.ncbar.org/public/publications/pamphlets/landlordsAndTenants.pdf> (NC Bar Association brochure, This is the Law, Landlords and Tenants)
- http://www.abanet.org/legalservices/lamp/cle/1105_Rowe_LandlordHandout.pdf (Overview of the law by attorney Mr. William Rowe)
- www.legalaidnc.org (Legal Aid of North Carolina, Inc.)